



POLICE DEPARTMENT

January 25, 2023

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-24742
Lieutenant Adam Mellusi	:	
Tax Registry No. 931825	:	
Strategic Response Group	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Claudia Avin, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Lieutenant Adam Mellusi, on or about June 4, 2020, at approximately 1956, while assigned to SRG 2 and on duty in the vicinity of East 136th Street, Bronx County, wrongfully used force, in that he authorized the use of a bike to push Sami Disu back without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Lieutenant Adam Mellusi, on or about June 4, 2020, at approximately 1956, while assigned to SRG 2 and on duty in the vicinity of East 136th Street and Brook Avenue, Bronx County, wrongfully used force, in that he authorized the use of a bike to push individuals back without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 15, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Sammy Disu as a witness, who was out of the country and testified remotely, and introduced into evidence video footage of the incident. Respondent called Captain David Miller as a witness, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Not Guilty.

ANALYSIS

On the afternoon of June 4, 2020, a group of several hundred people marched through the Bronx, protesting against police brutality and a lack of accountability. At the intersection of East 136th Street and Brook Avenue, police officers formed a line and used their bicycles to push back

protesters, including Sami Disu who testified at trial. Respondent is not accused of being one of the officers who used their bicycles in this manner; rather, he is charged with wrongfully *authorizing* the forcible use of the bicycles by the officers.

Sami Disu testified that at approximately 7:56 p.m., several minutes before an 8:00 curfew, he was near the front of the group that was proceeding on East 136th Street approaching Brook Avenue. According to Disu, during the march the protesters were agitated and chanting things like “Fuck the police,” but none of them were throwing objects and they were behaving peacefully throughout, without any interference from the police. Near the intersection, other protesters, who had been closer to the front, started running past Disu in the opposite direction. Disu moved toward the front to investigate, and observed a line of police officers with bicycles blocking the marchers’ access to Brook Avenue. From behind, Disu heard other protesters screaming that they, too, were being blocked off. Disu used his phone to record and document what was occurring at the intersection. That footage (CCRB Ex. 1), as well as video recorded by another individual and posted on Instagram (CCRB Ex. 2), essentially support Disu’s testimony as to what he observed as he approached Brook Avenue. The video also shows a protest organizer with a bullhorn encouraging the protesters to break through the officers into the intersection (CCRB Ex. 1 at 1:21), but Disu did not observe any protesters pushing the police officers on the line. (Tr. 20-23, 33, 39-40, 44, 46-50, 58-64, 74)

Disu testified that as he stood at the intersection, one of the police officers in front of him, without warning, gave a command, at which point the officers raised their bicycles and “rammed” the protesters several times with their bicycles. Disu, himself, was struck twice in his chest, and he was pushed backward from the impact; Disu claimed that he momentarily had the wind knocked out of him, and sustained small bruising under his armpit. The video footage

again essentially confirms Disu's account, as it shows an officer, later identified as Police Officer Stevens, giving a command, followed by the row of officers lifting their bicycles and pushing forward. (CCRB Ex. 1 at 1:37; CCRB Ex. 2 at 3:48) The video does not specifically capture Disu being struck in the chest, but Disu provided detailed, consistent testimony regarding how he was hit. (Tr. 23-25, 35-36, 68-70, 72)

After being struck with a bicycle, Disu reacted angrily, shouting "What are you doing?" at the officers. Disu testified that he moved away from the front of the line and slowly made his way back down 136th Street, where he observed officers arresting protesters. He was one of the few who eventually was able to exit the street without being arrested. (Tr. 27-28, 30-31, 70-73)

Captain David Miller, the Commanding Officer of the Crowd Management Unit, which is part of the Strategic Response Group, testified that he oversees the training of police officers in the use of bicycles for personal safety and for defensive measures. That training includes situations where a crowd is surging toward an area where the Incident Commander does not want the crowd to enter; the officers are trained on how to use a bicycle as a barrier. According to Captain Miller, the officers may also raise the bicycles to chest level and use them to guide the crowd back for safety purposes; the goal is to create space between the officers and the crowd. (Tr. 84-90, 110)

On the day of the incident, Captain Miller was working as commander of the Bike Field Force ("BFF"), which consisted of two teams, each led by a separate lieutenant; Respondent was one of the two "bike lieutenants," who supervised a team of two or three sergeants and approximately 20 police officers. Captain Miller testified that he was part of a tactical briefing at the 40 Precinct in which it was determined that the protesters should be stopped from crossing into Manhattan if they were unable to do so before the 8:00 p.m. curfew; those instructions were

relayed to the two BFF teams. Shortly before the curfew, the Incident Commander, Assistant Chief Lehr (who has since retired), requested assistance in the area near the Willis Avenue Bridge. When Captain Miller arrived at the intersection of East 136th Street and Brook Avenue, the bike lines were already in place. The Chief of Department, the Incident Commander, and other ranking members of the Department were present. Captain Miller did not know who organized the lines, nor did he witness the officers using their bicycles to guide the protesters. He also testified that he observed residents in the area who were not happy with the protesters being there, and asked the police officers to leave so that they could deal with the protesters themselves. (Tr. 94-106, 108-12, 121-22)

Respondent, who has been assigned to the Strategic Response Group since April 2019, testified that he has received training as a bicycle officer, but has not trained others. From his training, he learned about the use of a “mobile fence line,” where officers could use their bicycles to re-direct a group of people in a certain direction. Decisions on how and when to do so are made in real-time, based on the specific circumstances. (Tr. 127, 145, 157, 160, 165-66)

On the day of the incident, Respondent was one of two “Bike Lieutenants” on the BFF deployed to the Bronx in connection with the protest. He and Lieutenant Sojo supervised *separate* teams; each team consisted of two sergeants and approximately 16 or so police officers. A meeting of executives took place at the 40 Precinct, after which Captain Miller shared with the lieutenants what was discussed. Respondent testified that one of the main areas of concern was that three days earlier, a number of businesses in the neighborhood had been destroyed during protests; the police were now concerned with preventing a clash between counter-protesters and protesters. (Tr. 129-30, 134-35, 161-62, 170)

Respondent testified that he did not specifically discuss with his officers the use of force or how to employ their bicycles that day; he explained that the officers already had been trained on the use of force, and know that they each are responsible for their actions. The instruction given to his officers was to be safe, and to be guided by the Incident Commander at the location. Based on the direction the protesters were marching, Respondent initially led his team to Willis Avenue and East 135th Street, and a mobile fence line to block access to the bridge was formed without incident. When the protesters re-routed to East 136th Street, Respondent and Lieutenant Sojo each led their teams to the intersection of East 136th Street and Brook Avenue, though the two teams took separate routes to get to that location; Respondent had his team remain at East 135th Street for a few minutes in case the protesters decided to return, then proceeded with his team toward East 136th Street and Brook Avenue. (Tr. 136-40, 169-71, 180, 183-84)

Upon arrival at that intersection, Respondent observed that there was a group of protesters on East 136th Street, and that there were counter-protesters on Brook Avenue. Respondent also saw that Lieutenant Sojo's team already had a mobile fence line in place; that is the line of officers that is seen in the video footage in evidence. Respondent testified that he did not have any role in forming that line, and he did not direct or authorize the actions of those officers, as that team was supervised by another lieutenant and sergeant. Respondent identified himself in the video footage (CCRB Ex. 1 at 1:52; CCRB Ex. 2 at 4:04), as the officer in the yellow helmet who can be seen arriving at the location with his team *after* Officer Stevens has already given the command to raise the bicycles, and the line of officers has used their bicycles to move back the protesters. Although Respondent was not yet on the scene when that occurred, he testified that from his viewing of the video footage, the officers on the line acted consistently

with their training in order “to establish a zone of safety.” (Tr. 140-45, 148-51, 155-56, 164, 169, 171-72, 176-77, 180, 187)

Neither side chose to call as a witness Police Officer Stevens, the officer who gave the command for his colleagues to raise their bicycles and push back protesters. As such, that officer’s perspective on what transpired was not part of this trial.

As noted above, there is no allegation that Respondent, himself, used excessive force. Rather, Specifications 1 and 2 charge Respondent with wrongfully *authorizing* the use of bicycles by other police officers to forcibly push back protesters, including Sami Disu who was struck in the chest. The burden rests with the CCRB to prove that Respondent authorized the actions taken by the officers on the mobile fence line. The record, however, suggests otherwise: the credible evidence has established that it was *not* Respondent who authorized the use of bicycles to push back Disu and the other protesters.

Respondent testified credibly that the officers on the mobile fence line who used their bicycles to move back Disu and other protesters were part of a separate team, led by Lieutenant Sojo. I credit Respondent’s undisputed testimony that he and his officers had not yet arrived when the command to move the protesters was given by Officer Stevens, and Disu was struck in the chest. Indeed, the video footage confirms that by the time Respondent, in a yellow helmet, arrives on the scene with his team, the command has already been given, and the officers on the line, who were under the supervision of another lieutenant and sergeant, have used their bicycles to push back Disu and the other protesters. Respondent did not direct or authorize the actions of Officer Stevens and the other bicycle officers on that mobile fence line.

Additionally, Respondent did not train the officers in these tactics; rather, he received training like other members of his team. He also did not specifically instruct officers in his

group in advance to use the bicycles in this manner at that intersection. As Respondent explained, he did not know how the protest march would unfold, and so he waited to see where the marchers were headed, and what they were doing, before making decisions on how to proceed. Moreover, Respondent credibly explained that his officers already were familiar with what was expected of them, and understood that they would each be held individually accountable for their actions.

Under the totality of these circumstances, it would be unreasonable to hold Respondent responsible for the actions of police officers who were under the supervision of a different lieutenant and sergeant at the time. After carefully considering the totality of the evidence presented, including the video footage and the testimony of witnesses, I find that the CCRB has failed to prove, by a preponderance of the credible evidence, that Respondent authorized the actions of the officers on the bicycle line. Accordingly, I find Respondent not guilty of Specifications 1 and 2.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED



MAY 8 4 2023
KEECHANT L. SEWELL
POLICE COMMISSIONER